



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,386	03/22/2004	William P. Spencer	033572-001	1731
21839 7590 10/22/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER CARR, DEBORAH D	
			ART UNIT 1621	PAPER NUMBER
			NOTIFICATION DATE 10/22/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
debra.hawkins@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/805,386	<b>Applicant(s)</b> SPENCER ET AL.	
	<b>Examiner</b> Deborah D. Carr	<b>Art Unit</b> 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19 and 21-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19 21-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/07</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9 August 2007 has been entered.

***Response to Arguments***

2. Applicant's arguments, see page 6, filed 9 August 2007, with respect to the rejection(s) of claim(s) 19, 21-35 under 35 USC§102(b/e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US Pat. 6,417,227 or WO 00/85162 or US Pat. 4,113,881.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1621

4. Claims 19; 21-35 rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6,417,227 or WO 00/85162 or US Pat. 4,113,881.

US'227 teaches a compound and pharmaceutical composition containing said compound to treat arthritis. Said compound is cetyl myristoleate and can be administered to humans and animals daily. See columns 2-3.

WO'162 teaches a cetylated fatty acid and pharmaceutical composition containing said compound. Said compositions contain the cetylated fatty acids in the amount of 50 to 98% w/w of the mixture.

US'881 relates to a method for relieving and inhibiting at least one of the symptoms of inflammatory rheumatoid arthritis in mammals by administering orally, topically or parenterally a therapeutically effective amount of cetyl myristoleate.

The claims differ from the reference by limiting the treatment to periodontal disease. However it would have been obvious to one of ordinary skilled in the art at the time the invention was made to extrapolate periodontal disease could be treated.

The compositions used in the patents supra all treat inflammation, which is the source of the diseases disclosed. A recitation of the intended utility in the preamble does not impart patentability to a known composition. Since it is known cetyl fatty acid containing compositions can be used to treat inflammation, it is obvious that these compositions cited will also treat periodontal disease cause by inflammation.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 19, 21-35 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a pharmaceutical composition for treating periodontal diseases comprising from about 1% to about 10% of a lecithin fatty acid, from about 15% to about 25% olive oil fatty acid, from about 70% to about 80% of an esterified fatty acid, and about 1% to about 5% of a tocophenol, and pharmaceutically appropriate carriers thereof, does not reasonably provide enablement for a method of treating periodontal disease comprising administering an effective amount of a composition comprising a cetylated fatty acid the composition to a subject in need of such treatment.

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. All of the information contained in the specification enables a composition containing lecithin fatty acid, olive oil fatty acid, esterified fatty acid and tocophenol. There is no indication periodontal disease can be treated only with a pharmaceutical composition containing only cetyl fatty acid.

Art Unit: 1621


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637.

The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ddc

  
DEBORAH D. CARR  
PRIMARY EXAMINER